

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

UNITED AUTO WORKERS LOCAL 6000,  
PAUL POLICICCHIO, SUSAN CAREY,  
KATHLEEN DANIELS, INTERNATIONAL  
UNION, UNITED AUTOMOBILE, AEROSPACE  
& AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA UAW, and LYNDA LEWIS, a/k/a  
LYNDA TAYLOR,

Plaintiffs-Appellants,

v

STATE OF MICHIGAN PERSONNEL  
DIRECTOR, DEPARTMENT OF CONSUMER &  
INDUSTRY SERVICES, CIVIL SERVICE  
COMMISSION, and INTEGRATED SYSTEMS  
SOLUTIONS CORPORATION,

Defendants-Appellees.

---

UNPUBLISHED  
May 1, 2001

No. 220350  
Ingham Circuit Court  
LC No. 99-090053-AW

Before: Holbrook Jr., P.J., and McDonald and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order dismissing their claim seeking injunction or mandamus, pursuant to Const 1963, art 11, § 5, requiring the Civil Service Commission (the Commission) to assert preapproval jurisdiction over a contract between the Michigan Department of Consumer and Industry Services, formerly known as the Department of Labor (the Department) and Integrated Systems Solutions Corporation (ISSC). The circuit court dismissed for lack of jurisdiction, finding that its review of plaintiff's claim was precluded by a related pending circuit court action. We affirm.

Equitable issues are reviewed de novo, although the findings of fact supporting the decision are reviewed for clear error. *Cipri v Bellingham Frozen Foods*, 235 Mich App 1,9; 596 NW2d 620 (1999). However, a trial court's decision to grant or deny a writ of mandamus or an injunction will not be reversed absent an abuse of discretion; the decision must not be arbitrary and must be based on the facts of the particular case. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999); *Nicholas v Meridian Twp Bd*, 239 Mich App 525,

534; 609 NW2d 574 (2000); *Cipri, supra*. The issuance of a writ of mandamus is proper where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. *In re MCI, supra*; *Baraga Co v State Tax Comm*, 243 Mich App 452, 454-455; 622 NW2d 109 (2000).

Although the circuit court did not address the existence of the required elements, dismissing instead on jurisdictional grounds, we find it was correct in its conclusion that mandamus was not proper here. In light of our decision in Docket No. 222109 affirming the Commission's lack of jurisdiction over the contract, plaintiffs have no legal right to the requested performance and defendants have no legal duty to perform as requested. Whether such a duty arose was determined by the Commission's factual conclusion that the contract was not predominantly for personal services. Where factual questions exist concerning the existence of a legal duty, mandamus is inappropriate. *Durant v Dep't of Education (On Second Remand)*, 186 Mich App 83, 119; 463 NW2d 461 (1990). Furthermore, a ministerial duty is one regarding which the law prescribes and defines the performance with such precision and certainty as to leave nothing to the exercise of discretion or judgment; the Commission's factual determination that the contract fell outside its purview was discretionary. *Keaton v Beverly Hills*, 202 Mich App 681, 683; 509 NW2d 544 (1993). Plaintiffs had a right to compel the *exercise* of discretion but not to compel its exercise in a particular manner; since the Commission had already exercised its discretion, no compulsion is necessary. *Teasel v Dep't of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984); *North Oakland Co Bd of Realtors v Realcomp, Inc*, 226 Mich App 54, 57; 572 NW2d 240 (1997). Likewise, plaintiffs do not lack a remedy; their remedy was their appeal to this court in Docket No. 222109. *Lake Angelo Associates v White Lake Twp*, 198 Mich App 65, 73; 498 NW2d 1 (1993). Plaintiffs have not met the burden of proving entitlement to a writ of mandamus; the circuit court correctly denied that request. *In re Gosnell*, 234 Mich App 326, 342; 594 NW2d 90 (1999).

Injunction is the appropriate remedy to determine whether rights have been affected by the arbitrary or unreasonable action of an administrative agency. If the discretionary power of an administrative agency is abused or its judgment improperly exercised, the judiciary has the right to restrain the same. *Reed v Civil Service Comm*, 301 Mich 137, 152; 3 NW2d 41 (1942); *Sterling Secret Service, Inc v Michigan Dep't of State Police*, 20 Mich App 502, 509-510; 174 NW2d 298 (1969). Furthermore, Const 1963, art 11, § 5, ¶ 12 explicitly permits injunction as a remedy for the Commission's erroneous refusal to oversee personal services contracts. That paragraph reads:

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state. [Const 1963, art 11, § 5.]

A violation of this provision, in itself, amounts to irreparable harm supporting injunctive relief. *Michigan Coalition of State Employees Unions v Civil Service Comm*, 236 Mich App 96, 106-107; 600 NW2d 362 (1999).

In this case, however, we found in Docket No. 222109 that the Commission did *not* violate its constitutional mandate. The Commission did not abuse its discretion or improperly exercise its judgment. Furthermore, plaintiffs have an adequate legal remedy, which they have exercised, through the appeal process of Docket No. 222109. Injunction was properly denied.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Gary R. McDonald

/s/ Henry William Saad